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SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LOUELLA POOL, an individual,

Case No.

Plaintiff,

v.

SMITH'S FOOD AND DRUG CENTERS,  
INC., a foreign corporation; NICHOLAS  
SHOOP, an individual; DOE STORE  
MANAGER I through V; DOE STORE  
EMPLOYEE I through V; DOE & ROE  
EMPLOYERS; DOE OWNERS I through V;  
ROE OWNERS I through V; and ROE  
COMPANIES I through V, inclusive,

**NOTICE OF REMOVAL**

Defendants.

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. (hereinafter "SMITH'S") hereby  
gives notice of its removal of Case No. A-22-846780-C from the Eighth Judicial District Court,  
Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C.  
§§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

**I.**

**NOTICE OF REMOVAL IS TIMELY**

1. On January 14, 2022, Plaintiff LOUELLA POOL, filed this lawsuit against SMITH'S  
and one of its employees, NICHOLAS SHOOP ("SHOOP"), a Nevada resident.  
Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the  
Complaint and process, is attached hereto as Exhibit "A".

2. SMITH’S was served with process on or about January 20, 2022. SMITH’S hereby reserves any and all rights and defenses to Plaintiff’s Complaint.

3. SHOOP was served with process on or about January 31, 2022.

4. The Complaint filed and served on SMITH’S alleges that “By reason of the premises, and as a direct and proximate result of the aforesaid negligence and carelessness of each of Defendants . . . Plaintiff’s medical expenses and damages in amount in excess of One Hundred and Sixty Thousand Dollars and Zero Cents . . .” (Compl. ¶22).

5. Based upon the allegations in paragraph 22 of Plaintiff’s Complaint, Defense counsel is informed and believes that the “amount in controversy” exceeds the jurisdictional minimum for diversity jurisdiction.

6. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

7. The following pleadings have been entered and/or filed in State Court:

- a. Plaintiff’s Complaint filed January 14, 2022;
- b. Affidavit of Service – SMITH’S filed January 21, 2022;
- c. Affidavit of Service – SHOOP filed February 4, 2022
- d. SMITH’S Answer to Plaintiff’s Complaint filed February 9, 2022.

8. Other than the pleadings discussed above, no further proceedings have taken place in District Court, Clark County, Nevada as of the filing of this notice of removal.

## II.

### **DIVERSITY JURISDICTION EXISTS**

9. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between

1 citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

2 **A. The Amount in Controversy Requirement is Satisfied.**

3 10. Plaintiff's Complaint alleges that "By reason of the premises, and as a direct and  
4 proximate result of the aforesaid negligence and carelessness of each of Defendants . . . Plaintiff's  
5 medical expenses and damages in amount in excess of One Hundred and Sixty Thousand Dollars  
6 and Zero Cents . . ." (Compl. ¶22).

7 **B. The Parties Are Diverse.**

8 11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and  
9 believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada.  
10 (*See* Compl. ¶3).

11 12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio  
12 Corporation with its principal place of business in the State of Utah.

13 13. SHOOP was at the time of the filing of Plaintiff's Complaint and is now a citizen and  
14 resident of the State of Nevada; however, SHOOP is a sham Defendant named only to defeat  
15 diversity of citizenship jurisdiction. SHOOP could not have committed any acts of independent or  
16 direct negligence against Plaintiff as he was not working at the SMITH'S store when Plaintiff's  
17 accident occurred. Under the Fraudulent Joinder Doctrine, SHOOP'S citizenship should be ignored.  
18 Defendant SHOOP will be filing a Motion to Dismiss hereinafter.

19 **III.**

20 **REMOVAL TO THIS JURISDICTION IS PROPER**

21 14. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state  
22 court action to this Court is appropriate.

23 15. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and  
24 division embracing the place where the state action is pending 28 U.S.C. §108.

25 16. Defendants reserve the right to amend or supplement this Notice of Removal.

26 17. Defendants reserve all defenses, including, without limitation, the defense of lack of  
27 personal jurisdiction.

28 18. Defendants request a trial by jury of all issues.

